

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NEUROGRAFIX; NEUROGRAPHY)
INSTITUTE MEDICAL ASSOCIATES,)
INC; and IMAGE-BASED)
SURGICENTER CORPORATION,)
Plaintiffs,)
v.) Civil Action No. 12-11276-RGS
TRUSTEES OF BOSTON UNIVERSITY;)
BOSTON MEDICAL CENTER)
CORPORATION; BOSTON)
UNIVERSITY AFFILIATED)
PHYSICIANS, INC.; and BOSTON)
UNIVERSITY MEDICAL CENTER)
RADIOLOGISTS, INC.,)
Defendants.)
)

DECLARATION OF DAVID E. COLE

I, David E. Cole, hereby depose and say:

1. I am an attorney licensed to practice in the Commonwealth of Massachusetts. I am associated with the law firm of Foley Hoag LLP in Boston, Massachusetts, counsel for the defendants in this action. I base this declaration on my personal knowledge unless otherwise stated.

2. The document attached as Exhibit A is a true and accurate copy of U.S. Patent No. 5,560,360.

3. The document attached as Exhibit B is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the Central District of California in *NeuroGrafix v. Siemens Medical Solutions USA, Inc.*, Docket No. 10-1990.

4. The document attached as Exhibit C is a true and accurate copy of a webpage from Neurografix's website, last visited on October 26, 2012.

5. The document attached as Exhibit D is a true and accurate copy of NeuroGrafix, Inc's Statement By Domestic Stock Corporation dated March 18, 1999, which was obtained from the California Secretary of State's Office.

6. The document attached as Exhibit E is a true and accurate copy of the Image-Based Surgicenter Corporation's Statement of Information dated October 30, 2006, which was obtained from the California Secretary of State's Office.

7. The document attached as Exhibit F is a true and accurate copy of a webpage from Neurography Institute Medical Associates, Inc.'s website last visited on October 26, 2012.

8. The document attached as Exhibit G is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the Central District of California in *NeuroGrafix, et al. v. Oak Tree Medical Corp. et al.*, No. 08-02923.

9. The document attached as Exhibit H is a true and accurate copy of the first amended third party complaint filed in the United States District Court for the Central District of California in *NeuroGrafix et al. v. Oak Tree Medical Corp., et al.*, Docket No. 08-02923.

10. The document attached as Exhibit I is a true and accurate copy of the Notice of Settlement dated February 8, 2009 in *NeuroGrafix et al. v. Oak Tree Medical Corp., et al.*, Docket No. 08-02923.

11. The document attached as Exhibit J is a true and accurate copy of the order dismissing *NeuroGrafix et al. v. Oak Tree Medical Corp., et al.*, Docket No. 08-02923.

12. The document attached as Exhibit K is a true and accurate copy of “Legal wrangling puts rights to diffusion tensor imaging in spotlight” by Greg Freiherr dated November 5, 2010.

13. The document attached as Exhibit L is a true and accurate copy of the docket sheet in *NeuroGrafix et al. v. Siemens Medical Solutions USA, Inc. et al.*, Docket No. 10-01990.

14. The document attached as Exhibit M is a true and accurate copy of the order dismissing *NeuroGrafix et al. v. Siemens Medical Solutions USA, Inc. et al.*, Docket No. 10-01990.

15. The document attached as Exhibit N is a true and accurate copy of a webpage from Neurograffix’s website, last visited on October 26, 2012.

16. The document attached as Exhibit O is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the Central District of California in *NeuroGrafix et al. v. Regents of the University of California*, Docket No. 11-07591.

17. The document attached as Exhibit P is a true and accurate copy of the answer and counterclaim in *NeuroGrafix et al. v. Regents of the University of California*, Docket No. 11-07591.

18. The document attached as Exhibit Q is a true and accurate copy of the General Electric Co.’s motion to intervene in *NeuroGrafix et al. v. Regents of the University of California*, Docket No. 11-07591.

19. The document attached as Exhibit R is a true and accurate copy of the order allowing General Electric Co.’s motion to intervene in *NeuroGrafix et al. v. Regents of the University of California*, Docket No. 11-07591.

20. The document attached as Exhibit S is a true and accurate copy of the docket sheet in *NeuroGrafix et al. v. Regents of the University of California*, Docket No. 11-07591 as of September 28, 2012.

21. The document attached as Exhibit T is a true and accurate copy of the Regents and General Electric Co.'s joint motion for summary judgment in *NeuroGrafix et al. v. Regents of the University of California*, Docket No. 11-07591.

22. The document attached as Exhibit U is a true and accurate copy of the complaint filed in the United States District Court for the Central District of California in *General Electric Co. v. NeuroGrafix et al.*, Docket No. 12-04586.

23. The document attached as Exhibit V is a true and accurate copy of the order denying NeuroGrafix et al.'s motion to dismiss General Electric Co.'s complaint in *General Electric Co. v. NeuroGrafix et al.*, Docket No. 12-04586.

24. The document attached as Exhibit W is a true and accurate copy of the Order Denying NeuroGrafix's Motion to Reconsider the Court's Finding that Declaratory Judgment Jurisdiction Exists as to Covenanted Claims 1-53 and 55-63.

25. The document attached as Exhibit X is a true and accurate copy of the order denying NeuroGrafix's motion to certify the court's August 16, 2012 order for interlocutory appellate review in *General Electric Co. v. NeuroGrafix et al.*, Docket No. 12-04586.

26. The document attached as Exhibit Y is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the District of Massachusetts in *NeuroGrafix et al. v. Philips Electronics North America Corp. et al.*, Docket No. 12-11065.

27. The document attached as Exhibit Z is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the Northern District of Illinois in *NeuroGrafix et al. v. BrainLab et al.*, Docket No. 12-6075.

28. The document attached as Exhibit AA is a true and accurate copy of the defendants' answer and counterclaim in *NeuroGrafix et al. v. Philips Electronics North America Corp. et al.*, Docket No. 12-11065.

29. The document attached as Exhibit BB is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the Northern District of Illinois in *NeuroGrafix et al. v. University of Chicago et al.*, Docket No. 12-06068.

30. The document attached as Exhibit CC is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the District of Maryland in *NeuroGrafix et al. v. Johns Hopkins University et al.*, Docket No. 12-02181.

31. The document attached as Exhibit DD is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the District of Massachusetts in *NeuroGrafix et al. v. Trustees of Tufts College, et al.*, Docket No. 12-11277.

32. The document attached as Exhibit EE is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the District of Massachusetts in *NeuroGrafix et al. v. Beth Israel Deaconess Medical Center, Inc., et al.*, Docket No. 12-11274.

33. The document attached as Exhibit FF is a true and accurate copy of the complaint without exhibits filed in the United States District Court for the District of Massachusetts in *NeuroGrafix et al. v. Brigham and Women's Hospital, Inc., et al.*, Docket No. 12-11275.

34. The document attached as Exhibit GG is a true and accurate copy of the complaint without exhibits filed in the United States Court of Federal Claims in *NeuroGrafix et al. v. United States of America*, Docket No. 12-00385.

35. The document attached as Exhibit HH is a true and accurate copy of the defendants' motion to dismiss in *NeuroGrafix et al. v. Johns Hopkins University et al.*, Docket No. 12-02181.

36. The document attached as Exhibit II is a true and accurate copy of the United States Patent and Trademark Office's order granting an *ex parte* reexamination request.

37. The document attached as Exhibit JJ is a true and accurate copy of NeuroGrafix et al.'s first supplemental disclosure of asserted claims and infringement contentions without exhibits in *NeuroGrafix et al. v. Regents of the University of California*, Docket No. 11-07591.

38. The document attached as Exhibit KK is a true and accurate copy of "Ex Parte Reexamination Filing Data - June 30, 2012" from the United States Patent and Trademark Office.

39. The document attached as Exhibit LL is a true and accurate copy of Defendant Jay Tsuruda's amended answer and counterclaim in *NeuroGrafix, et al. v. Oak Tree Medical Corp. et al.*, No. 08-02923.

40. The document attached as Exhibit MM is a true and accurate copy of the Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action to The Brigham and Women's Hospital, Inc. in *NeuroGrafix et al. v. Regents of the University of California*, Docket No. 11-07591.

41. The document attached as Exhibit NN is a true and accurate copy of an excerpt from Aaron G. Filler's "The Smart Guide to Patents" (2012).

42. The document attached as Exhibit OO is a true and accurate copy of the complaint without exhibits filed in the Superior Court of the State of California-County of Los Angeles: Central District in *NeuroGrafix, et al. v. Regents of the University of California et al.*, Docket No. BC447518.

I declare under the penalty of perjury that the foregoing statement is true and correct.

/s/ David E. Cole

Dated: October 29, 2012

Certificate of Service

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as unregistered participants on October 29, 2012.

/s/ David E. Cole